

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

La Touraine LLC d/b/a  
Sofitel Chicago Magnificent Mile

and

Case No. 13-CA-236423

UNITE HERE Local 1

**AFFIDAVIT OF RESPONDENT'S COUNSEL, KARL M. TERRELL  
IN SUPPORT OF UNOPPOSED MOTION  
TO ALLOW LATE FILING OF EXCEPTIONS BRIEF**

Appearing before the undersigned officer, duly authorized by law to administer oaths,  
KARL M. TERRELL, who deposes and swears under oath the following:

1. My name is Karl M. Terrell, and I am counsel for the Respondent named in this case, *La Touraine LLC d/b/a Sofitel Chicago Magnificent Mile*. The facts stated here are submitted in support of Respondent's Unopposed Motion to Allow Late Filing of Exceptions Brief, filed on December 26, 2019. The facts stated below are true and correct, and are based on my personal knowledge.

2. Of the two counsel for Respondent on this matter (the other being Arch Stokes), I was solely responsible for the writing and filing of the Exceptions and brief in support. I had previously requested, and received, an extension of the deadline to December 23, 2019, based on a trip I had planned out of the country from November 28 to approximately December 12.

3. I was fully on track, on the afternoon of December 23, to complete the drafting and the filing of the Exceptions and brief. I was working at the time in my Atlanta residence, on the 12<sup>th</sup> floor of a 14-story building (Peachtree Battle Condominiums, 2285 Peachtree Road, Unit 1204, Atlanta, GA 30309). My wife Diane Terrell was present with me.

4. In finalizing the brief, I was coordinating with my assistant Felicia Brogden, who was in our firm's Atlanta office, by telephone and email.

5. Around 2:45 pm that afternoon, a fire alarm in my building was set off. My wife and I were directed to leave the building by a recorded announcement accompanying the alarm sound. This was an actual fire alarm, not a planned drill. I was not able to re-enter the building and continue working on the brief until approximately 4 pm.

6. It was obvious at that point – for the reasons explained in my quoted email in the next paragraph – that I would not be able to complete the brief that day.

7. After returning to my apartment, I sent the following email at 4:32 pm – copy attached – to counsel for the General Counsel assigned to this case (Kevin McCormick) and explained the circumstances, with additional detail as stated below, in order to request his consent to the extension of time I would need (*I affirm here under oath the truth of the statements made in this email*, quoted below):

Kevin,

My exceptions brief is due today. I was on track to have my office e-file this today around 5 pm ET, when around 2:45 pm a fire alarm in the building where I live in Atlanta went off. Causing me to walk down 12 flights, etc.

For purposes of verite, here's a photo from the outside while waiting to get back in — about 30 minutes ago now.

Anyway, my carefully timed plan, after 3, was to finish a couple of paragraphs, have my office auto-add a table of contents and table of authorities, and then do a final proof by 5 pm. This was made impossible. I have a dinner commitment this evening with a large group, and my assistant Felicia (copied here) also has a commitment she can't break. Consequently, I cannot complete the brief this evening.

Tomorrow, and of course Wednesday (Christmas Day), our office is fully closed, and I am wholly dependent on Felicia to get this properly e-filed.

I need an extension, therefore, to Thursday morning, and am asking for your consent to permit the late filing. We will submit a simultaneous formal request

Thank you,

Karl M. Terrell  
STOKES WAGNER

404-693-5777 c

8. As the attached email chain reflects, Mr. McCormick was out of his office that day. Per the direction of Mr. McCormick's auto-reply, I then sent an email to his supervisor, Board counsel Kate Gianopulos. See attached, as part of the same chain. This email explained also the following: "I do not have a counsel contact for UNITE-HERE, nor do I recall counsel from the union involved. (A representative of the union, Elliott Mallen, was present at the hearing, but I cannot find an email address, and it's not in the transcript.)"

9. Ms. Gianopulos then telephoned me and we spoke. She stated on behalf of the Region that this request for permission to file late would not be opposed.

10. Confirmation of this consent was stated in the subsequent attached email to Judge Carter, copied to Ms. Gianopulos. Judge Carter had provided his individual email address during the hearing. I proposed to send the email to Judge Carter, a proposal Ms. Gianopulos indicated would be fine. By this point in time it was after 5 pm, and I assumed that both the office of the Executive Secretary and Division of Judges (Washington) were closed. As you can see from the attached, Judge Carter responded this matter was no longer within his jurisdiction, and indicated I should contact the office of the Executive Secretary. I responded: "Understood. Thank you."

11. The following day, Tuesday December 24, was Christmas Eve. As stated in my email to Mr. McCormick, my office was to be fully closed that day, and of course we were closed

on Christmas Day as well. As also stated in that email, I was “wholly dependent on [my paralegal] Felicia [Brogden] to get this properly e-filed,” as well as dependent on her to auto-add the table of contents and table of authorities.

12. On Thursday morning, as promised in my email to Mr. McCormick, Felicia in my office e-filed the Exceptions brief, and also our Unopposed Motion to Allow Late Filing.

13. I apologize for my failure in adhering to the applicable rule, and thereby neglecting at that point to prepare and swear an affidavit under oath, but I do so now with this signed document.

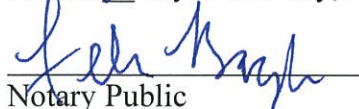
FURTHER AFFIANT SAYETH NOT.



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Karl M. Terrell

Subscribed and sworn to before me  
on this 2<sup>nd</sup> day of January, 2020.

  
Notary Public

Felicia Brogden  
NOTARY PUBLIC  
Clayton County, GEORGIA  
My Comm. Expires 01/23/2020

**ATTACHMENT**

**Subject:** Re: La Touraine LLC d/b/a Sofitel Chicago Magnificent Mile and UNITE-HERE, Local 1; case no. 13-CA-236423 / emergency need for short extension  
**Date:** Monday, December 23, 2019 at 5:57:13 PM Eastern Standard Time  
**From:** Karl M. Terrell  
**To:** Carter, Geoffrey  
**CC:** Gianopulos, Kate, McCormick, Kevin, Felicia M. Brogden

Understood. Thank you.

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**From:** "Carter, Geoffrey" <Geoffrey.Carter@nlrb.gov>  
**Date:** Monday, December 23, 2019 at 5:44 PM  
**To:** "Karl M. Terrell" <kterrell@stokeswagner.com>  
**Cc:** "Gianopulos, Kate" <Kate.Gianopulos@nlrb.gov>, "McCormick, Kevin" <Kevin.McCormick@nlrb.gov>, "Felicia M. Brogden" <fbrogden@stokeswagner.com>  
**Subject:** Re: La Touraine LLC d/b/a Sofitel Chicago Magnificent Mile and UNITE-HERE, Local 1; case no. 13-CA-236423 / emergency need for short extension

Since this case is before the Board (not the division of judges), I do not have jurisdiction over your request. A board official such as the executive secretary would be the one to contact.

Regards,  
Judge Carter

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**From:** Karl M. Terrell <kterrell@stokeswagner.com>  
**Sent:** Monday, December 23, 2019 5:29 PM  
**To:** Carter, Geoffrey  
**Cc:** Gianopulos, Kate; McCormick, Kevin; Felicia M. Brogden  
**Subject:** FW: La Touraine LLC d/b/a Sofitel Chicago Magnificent Mile and UNITE-HERE, Local 1; case no. 13-CA-236423 / emergency need for short extension

Judge Carter,

Please see below my request sent this afternoon to counsel for the General Counsel Kevin McCormick in this case, seeking his consent to my need for an emergency extension, and describing my situation making this necessary.

As you'll see in the chain below, I then contacted CGC Kate Gianopulos, who then telephoned me about 10

minutes ago.

Ms. Gianopulos, copied here, said the Region does not object to my request to file my exceptions brief on Thursday, the day after Christmas. She suggested I file an EOT today with the Division of Judges, but this is not possible for me to do at this moment (for the reasons indicated in my first email to Mr. McCormick).

Hence, for the moment, I am doing the best I can by alerting you. The brief will be filed Thursday, and whatever formal filing is needed with the Division of Judges can be done simultaneously.

Thank you for your time. Happy holidays.

Karl M. Terrell  
STOKES WAGNER

404-693-5777 c

On 12/23/19, 4:57 PM, "Karl M. Terrell" <kterrell@stokeswagner.com> wrote:

Ms. Gianopulos,

I am forwarding this to you, per direction of Kevin McCormick's out-of-office auto-reply.

This relates to:

La Touraine LLC d/b/a Sofitel Chicago Magnificent Mile and UNITE-HERE, Local 1; case no. 13-CA-236423.

I do not have a counsel contact for UNITE-HERE, nor do I recall counsel from the union involved.

(A representative of the union, Elliott Mallen, was present at the hearing, but I cannot find an email address, and it's not in the transcript.)

Thank you for your consideration of my need described below.

Karl M. Terrell  
STOKES WAGNER

404-693-5777 c

On 12/23/19, 4:32 PM, "Karl M. Terrell" <kterrell@stokeswagner.com> wrote:

Kevin,

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Karl M. Terrell  
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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

LA TOURAINE LLC d/b/a SOFITEL CHICAGO -  
MAGNIFICENT MILE

and

Case No. 13-CA-236423

UNITE-HERE LOCAL 1

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Affidavit of Respondent's Counsel, Karl M. Terrell, in Support of Unopposed Motion to Allow Late Filing of Exceptions Brief was electronically filed with Region 13 and the Division of Judges by using the NLRB's electronic filing system on its website: <http://www.nlr.gov> and E-mailed to counsel below:

Kevin McCormick, Esq.  
Kate Gianopulos, Esq.  
National Labor Relations Board, Region 13  
219 South Dearborn, Room 808  
Chicago, IL 60604  
(312)353-7594  
[Kevin.mccormick@nlrb.gov](mailto:Kevin.mccormick@nlrb.gov)  
[Kate.gianopulos@nlrb.gov](mailto:Kate.gianopulos@nlrb.gov)

David Barber, Esq.  
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[dbarber@msh.law](mailto:dbarber@msh.law)

Unite Here, Local 1  
Marcos Feldman  
218 S. Wabash Ave, 7<sup>th</sup> Floor  
Chicago, IL 60604  
[mfeldman@unitehere.org](mailto:mfeldman@unitehere.org)

Dated: January 2, 2020

*/s/ Karl Terrell*

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Karl Terrell